IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION NO. 2280 OF 1992

1.Oriental Insurance Co. Ltd.)
a company registered under the)
Companies Act I of 1956 having)
its office at BCDO No.14,)
Oriental House,7, Jamshedji)
Tata Road, Bombay-400020.)

2.The Divisional Manager,)
Oriental Insurance Co. Ltd.)
having his office at BCDO No.14)
Oriental House,7, Jamshedji)
Tata Road, Bombay-400020.)..PETITIONERS

Versus

1.State of Maharashtra)
2.Collector, having his office)
at Old Customs House, Bombay)
3.The Superintendent of Stamps)
having his office at General)
Stamp Ofice, Old Custom House)
Bombay.)
4.Mazgaon Dock Ltd.,)
havibng its office at Dockyard)
Road, Nazagon, Bombay-400 010)
5.Oil and Natural Gas Commission)
having their office at)
Express Towers, 12th Floor,)
Nariman Point,Bombay-400 020)..RESPONDENTS

Mr. M.S. Doctor with Ms. Alpana Ghone i/b. Kanga & Co., for the petitioner
Mr. S.K. Nair, A Panel Counsel for Respondent Nos. 1 to 4
Ms. Usha Singh i/b. Vyas & Balwal for respondent No.5.

CORAM: **F.I. REBELLO &**
MRS.V.K.TAHILRAMANI, JJ.
DATE: 7TH JUNE,2006

JUDGMENT (PER F.I. REBELLO, J.).

1. The petitioners herein are challenging the demand made by the Respondents to pay stamp duty, on

the policies as being covered under Article 47A (ii) of the Indian Stamp Act namely as a Policy of Sea Insurance.

2. A few facts may now be set out. The petitioner No.1 had issued four Insurance policies in favour of Respondent No.4-Mazgaon Dock Limited and two insurance policies in favour of Respondent No.5-Oil & Natural Gas Commission for construction of rigs. Four of the policies were adjudicated and two were not adjudicated in terms of the return filed by Superintendent of Stamps. The petitioner No.1 is engaged in the business of general insurance and is a subsidiary of General Insurance Corporation of India, a wholly owned Undertaking of the Government of India. The respondent No.2 under the provisions of the Indian Stamp Act 1899, hereinafter known as the Stamp Act, has certain statutory duties to perform.. In the year 1985 the petitioners issued to Mazgaon Dock Limited and O.N.G.C., Builders Risk Policies. By letter of 14th March, 1985 addressed to Respondent No.2 Petitioners sought adjudication of the stamps charges payable. By letter dated 20th March, 1985, it was set out that the policy was Builders Risk Policy and the stamp charges applicable were 0.10 paise per Rs.1500/- of part thereof, irrespective of the period of the insurance. The respondent No.2 adjudicated the same in terms of Section 31 of the Stamp Act and the petitioners thereafter paid the

stamp duty in terms of Section 32 of the Stamp Act. The stamp duty was paid as certified by the respondent No.2.

. On 6th May, 1987 the petitioners sent another policy i.e. Marine Hull Policy for adjudication. The petitioners pointed out that the stamp duty payable on the policy was 10 paise for Rs.1,500/- on the sum assured. This policy was also adjudicated as per particulars contained in the petitioners letter dated 6th May, 1987 and the stamp duty was accordingly paid as certified.

3. By letter of 12th November, 1987 the petitioner sent a third policy known as Marine Hull Policy for adjudication. The petitioners also gave their computation of the stamp duty payable and offered to pay the stamp duty mentioned therein. The petitioners received a letter dated 12th December, 1987, calling on the petitioners to state and note in the document, the value of the amount insured and also the period of insurance in the document. By letter of 18th December, 1987 it was intimated that the total value had been shown and the period of insurance had also been set out. By letter of 7th January, 1988 petitioners were informed by the Superintendent of Stamps, Mumbai that the insurance policy mentioned therein had been sent for adjudication by letter dated 22nd June, 1985 and the

stamp duty was paid after the payment was certified under Section 32 of the Stamp Act. However, during the course of inspection, the audit party raised a point regarding the chargeability of stamp duty, under Article 47A(2)(iii) at the rate of 25 paise for every full sum of Rs.1000/- or part thereof. The petitioners were called upon to pay the difference. The petitioners by letter dated 20th January, 1988 provided the information and called on the respondents to explain the fact that the fabrication of the vessel on-shore under no circumstances could be considered to be sea insurance. Further correspondence was exchanged between the parties as to the nature of the policy. The stand of the respondent was that the policy was a combined policy i.e. Hull Policy and Builders Risk Policy of different amounts of insurance. By communication of 19th July, 1988 in respect of the policy set out therein, it was mentioned that it would be chargeable under Article 47A(i)(iii) of Schedule I. The petitioners disagreed with the contentions as urged. There were other correspondence in respect of other policies where the demand had been made. It is these demand which are the subject matter of the present petition which according to the petitioners is totally arbitrary being without jurisdiction as the petitioners are not covered under the Head, which the respondents have demanded.

4. Reply has been filed by respondent No.3. It is their stand that the Policies which were forwarded to them, the stamp duty was payable under Article 47A(2)(iii) of the Indian Stamp Act. Reference is made to the correspondence and it is pointed out, that in respect of some policies through oversight the stamp duty was assessed and determined under Article 47A(i)(ii). This discrepancy was brought to the notice by the Audit Party and thereafter the various averments as set out therein. In para.13 are set out six policies out of which on four polices stamp duty was paid under Article 47A(i)(ii). In so far as 5th and 6th policies are concerned they were yet to be adjudicated. It is contended that the policies of the petitioners are relating to a vessel and are policies of sea insurance. It is then set out that as provided under Section 56(2) of the Indian Stamp Act where the Collector if in the opinion of the Collector has doubt about actual stamp payable, it is in these circumstances that in respect of the policies which were already charged and certified that it was open to the respondents to demand deficiency.

5. On behalf of the petitioners their learned Counsel has made the following submissions:-

(i). That the policies were adjudicated under Section 31 and certified under Section 32. Once this

was done by the authority exercising the powers under Sections 31 and 32 of the Stamp Act that decision has become final and it was not open to any of the authorities to revise or review the order of adjudication made under Section 31 and the certificate issued under Section 32 of the Stamp Act. In the instant case, therefore, the demand made is without the authority of law and consequently liable to be quashed and set aside.

(ii). It is then submitted that Article 47A applies to Sea insurance. In the instant case there was no vessel for the policy to fall under the expression Sea Insurance nor was the vessel navigating, assuming that the rig can be said to be a vessel. The demand, therefore, made by the respondents assuming that the subject matter is a vessel and therefore, has to be covered by the policy of sea insurance is without jurisdiction and consequently liable to be set aside.

(iii) It is lastly submitted that the respondents could not have exercised powers under Section 56 of the Stamp Act. The power conferred on the Chief Controlling Revenue Authority under Section 56(1) is in respect of Chapter IV and Chapter V and under clause (a) of the first proviso to Section 26. Sections 31 and 32 of the Stamp Act neither fall under Chapter IV nor under Chapter V. Sections 31 and 32 are covered by Chapter III. The action of the

respondents, therefore, in seeking to exercise power under Section 56(1) of demanding additional stamp duty is without the authority of law. AT any rate the calculation in respect of the policies adjudicated had made no reference under Section 56(2) of the Stamp Act.

6. With the above background let us now consider the first submission as urged on behalf of the petitioner. Was it open to the respondents in respect of those policies which were sent for adjudication under Section 31 and which were certified under Section 32 and stamp paid thereon to reassess them for purported stamp duty deficiency. Chapter III falls under the heading "Adjudication as to Stamps". It provides that when any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it, applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, the Collector shall determine the duty with which, in his judgment, the instrument is chargeable. In the process of adjudication, it is open to the Collector to consider such evidence for the purpose of determining the stamp duty payable. In other words under Section 31 the Collector is empowered to adjudicate as to how much stamp duty is chargeable on the instrument. Once the Collector adjudicates upon the stamp duty chargeable, it is

open then for the party who had sought adjudication, to pay the stamp duty as adjudicated under Section 31. Once the adjudication is complete and the stamp duty as paid is adjudicated the instrument shall be deemed to have been duly stamped. In other words Sections 31 and 32 contain a mechanism for adjudication by the Collector on an application by the party interested or may be also a suo motto exercise of power. However, once the Collector adjudicates the issue the same becomes final in terms of Section 32(3) of the Act and can be acted in the Court of law. In the judgment of the Apex Court in **Government of U.P. & Ors. vs. Raja Mohammad Amir Ahmad Khan, AIR 19161 SC 787**, various issues arose, including the power of the Collector to impound a document which had been produced before him for adjudication. After considering the scheme of the Act the Court was pleased to observe as under:-

> "The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under S.31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under S.32 the Collector will then make an endorsement and the instrument will

be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable, then, no consequence will follow, and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of S.33have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done."

This judgment was considered by a Special Bench of the Madras High Court in the case of **The Chief Controlling Revenue Authority, Board of Revenue, Madras vs. Dr. K. Manjunatha Rai, AIR 1977 Madras 10.** The scope and ambit of Sections 31 and 32 were considered by the learned Special Bench of the Madras High Court. The law on the point was summed up in para.11 which reads as under:-

"11. On the basis of the above rulings, the legal position may be summed up thus: The Collector's determination under Sec.31 of the Stamp Act as to the stamp duty payable on an instrument would be final and conclusive only in cases where the Collector follows up his

> adjudication under Sec.31 by a relative endorsement on the instrument itself under Sec.32 to the effect that proper duty has been fully paid, or, in cases where he has expressed the opinion that no duty is payable, makes an endorsement to that effect on the instrument itself. Where, however, the Collector has not certified by endorsement on the instrument either in terms of Sec.32(1) or in terms of Sec.32(2) his adjudication as to stamp duty on the instrument brought before him under Sec.31 cannot be a bar to other authorities competent under the Stamp Act to examine or re-examine the question of proper stamp duty paid on it."

From the above paragraph the law as stated is that once the matter is sent for adjudication under Sections 31 and 32 and the endorsement is issued on the instrument is treated as duly stamped and that adjudication as to payment of stamp duty becomes final subject to whatever remedy may be available under the Act. We are in respectful agreement with the law as state by the Madras High Court. The power to revise and/or review the order of the Collector under the Stamp Act can only be, if there be a statutory power. Section 56 which was brought to our attention confers no such suo motto power. In our

opinion therefore, in so far as the instruments which were already charged and the stamp duty had been paid they could not have been the subject matter of a final adjudication and/or what the respondents state review. The action of the respondents to that extent that they have demanded the stamp duty from the petitioners on the four instrument is clearly without jurisdiction and consequently null and void.

7. We will now examine whether the policies sent for adjudication and on which stamp duty has been paid as also other insurance policies which have been issued by petitioner No.1 in favour of Respondent Nos. 4 and 5 and which are subject matter of this petition are sea insurance policies. As noted earlier it is only a sea insurance policy which is covered by Article 47A. We may gainfully refer to one such policy. The caption shows that it is a matter pertaining to Platform/Load-out/Installation, etc., and the property covered is set out hereunder:-

> "This Policy insures all lawful merchandise consisting principally of offshore platforms, structures, production equipment, machinery and supplies of any description, a part of or to become a part of property installed or to be installed by the Assured, including temporary treacles, form and similar structures.

It is the intent of this insurance to cover the property insured whilst;

1. In transit on land or water and between onshore job site (or sites) Bombay and offshore job site at Bombay High, direct or otherwise including during loading onto, or unloading from transporting conveyances.

2. During the course of fabrication, erection and installation of the insured property and until completion and acceptance by owners, plus 12 months maintenance period."

We may refer to some definitions under the Act. Section 2(20) defines '**Policy of Sea-insurance or Sea-policy' as "**policy of sea-insurane" "sea-policy"-

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship of vessel, and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance."

We are not really concerned with the proviso.

Section 7 as it now stands reads as under:-

"7. Policies of sea-insurance.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time."

8. From the above what emerges is that,t in so far as sea insurance is concerned it has to be either in respect of voyage and it can either be a policy upon voyage or policy for time and in some cases both. It is not necessary to reproduce Article 47A

and B. It may, however, be noted that the policy of insurance is contemplated under Article 47 is to cover the voyage and the cargo for or upon any voyage. In other words the vessel must be sailing. Reading of Section 7, with Section 2(20) indicates that a policy of sea insurance is taken out, for or upon a voyage and also for time, which is the period which the ship requires to reach its destination. The definition of policy of sea insurance which is a sea policy itself also indicates a policy of insurance on any ship or vessel or upon the machinery, tackle or furniture of a ship or vessel or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel. The terms ship or vessel have not been defined under the Act, but we find the definition of a ship or vessel in the Merchant Shipping Act. Ship has been defined under the Merchant Shipping Act, 1958 as not to include a sailing vessel. In other words any other vessel which can sail would form part of the definition of ship whether mechanically propelled or otherwise. Vessel has been defined under Section 3(55) to include any ship, boat, sailing vessel or other description of vessel used in navigation. It is, therefore, clear that there must be also an element of navigation to bring the objet under the expression vessel or ship. "Navigation"

means the act of sailing a vessel in water. The expression navigation has not been defined in the Act, but we may gainfully refer to the Dictionary meaning of the expression "Navigate" means to travel or sail in a vessel on water and it would thus be clear that for the policy to be held to be policies of sea insurance, it must be associated with a vessel which can navigate. On behalf of the Respondents learned Counsel drew our attention to the provisions of the Marine Insurance Act, 1963. Section 3 of that Act sets out that a contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure. Marine adventure is defined under Section 2(d) to include any adventure where:

(i) any insurable property is exposed to maritime perils;

(ii) the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loans, or disbursement is endangered by the exposure of insurable property maritime perils;

(ii) any liability to a third party may be

incurred by the owner of or other person interested in or responsible for, insurable property by reason of maritime perils;

We may reproduce the expression "maritime perils" which means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy.

. A proper reading, therefore, of the various definitions in the various acts and dictionary meaning, would make it clear that maritime perils must be associated with navigation. The insurance policy must be for the vessel which navigates or for goods carried on in that vessel.

In the instant case is it so? What has been fabricated is not a vessel, but marine platforms. No doubt the marine platforms are to be towed to the side. The policy of insurance taken out is for the structure which is fabricated. The policy taken for the vessel which may be towing the fabricated platform is an independent policy. It,therefore, cannot be said that merely because the fabricated platform for the purpose of erection in the sea is

being towed by a vessel, that platform itself becomes a vessel or the policy which covers it becomes a policy of sea insurance. The Platform does not navigate on its own, it must be towed by a vessel which navigates. The Platform is, therfore, not a vessel or ship. We are clearly, of the opinion that the policies which were issued by the petitioners to Mazgaon Dock and O.N.G.C. do not fall under the expression policy of sea insurance . Once that be the case the question of for or upon voyage or for time, does not arise. Article 47 itself will indicate that the expressions for or upon any voyage or for time are associated with voyage undertaken by the ship or time taken by the ship to complete the voyage. Section 7 of the Stamp Act clearly indicates that the policy of sea insurance is associated with a ship. In the instant case we are not concerned with the voyage by a ship as the petitioners have not insured in the instant case any ship manufactured by either Mazgaon Dock or the O.N.G.C. The insurance policies, therefore, issued cannot be said to be policies of sea insurance. They would be covered by Section 47B under other classes of insurance. The demand, therefore, now made by the respondents calling on the petitioners to pay stamp duty as sea insurance policy of time is clearly without jurisdiction and consequently the demand is null and void.

. We make it clear that in so far as the stamp duty already paid by the petitioner under Section 47A (i)(ii), there can be no order of refund as the petitioners have neither challenged the same nor assailed the same. The petitioners have only come to this Court in respect of a demand made by the respondents.

9. We then come to the last submission as to whether there was power in the respondents under Section 56, after policies were adjudicated under Section 31 and certified under Section 32 of revision or to review the orders of adjudication. Section 56(1) is clear that only powers exercisable by the Collector under Chapter IV and V and under clause (a) of the first proviso to Section 26 are subject to the control of the Chief Controlling Revenue-authority. In the instant case as noted earlier, Section 31 and 32 fall in Chapter III. Section 56(1) would, therefore, not apply. Under sub-section (2) of Section 56 it is the Collector acting under Section 31, if has any doubt is empowered to refer the matter with his opinion to the Chief Controlling Revenue-authority. That does not mean that once adjudication has been done under Section 31 and certificate issued under Section 32, that there is any suo motto power of revision in the Chief Controlling Revenue-authority. A reading of the Section does not confer any such jurisdiction either expressly or impliedly. The exercise of

jurisdiction by the respondents under Section 56 is totally without jurisdiction. That jurisdiction under Section 56(2), could have been exercised if the Collector had referred the matter. There has been no such exercise. Apart from that there is no other power. In our opinion, therefore, the demand made is without authority of law and consequently null and void.

10. For the reasons aforesaid we partly allow the petition and issue the following directions:-

(a). In the instant case the policy for the purpose of the Stamp Act will be covered by Article 47B of the Indian Stamp Act and as such the two policies in respect of which there was no certification under Sections 31 and 32 of the Indian Stamp Act, duty is payable in terms of Article 47B.

(b). In respect of those policies in respect of which the adjudication has been done under Section 31 and 32 of the Indian Stamp Act, the demand of payment by the respondents on the petitioner under Article 47A(2)(iii) is without jurisdiction and is consequently quashed.

(c). The petitioners pursuant to interim orders of this Court had deposited a sum of Rs.2.65 lakhs. Prothonotary & Senior Master is directed from the

said amount to pay to the respondent the amount calculated in terms of Article 47B along with proportionate interest thereon from the interest on deposit, if any in respect of two policies mentioned earlier. The balance of the amount along with proportionate interest, if any, to be returned to the petitioners on a certified copy of this order being made available.

(d). The bank guarantee which was given stands revoked and the bank guarantee to be returned to the petitioners.

. Rule made absolute accordingly. In the circumstances of the case there shall be no order as to costs.

11. Learned Counsel for the respondents seeks stay of the above order. In our opinion this is not a fit case to grant stay. Application for stay rejected.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI,J)**